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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,144	07/06/2000	Wolfgang Neuberger	BJA170A	5264

28184 7590 07/31/2006
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EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/611,144	Applicant(s) NEUBERGER ET AL.	
	Examiner Ahmed M. Farah	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4 and 6-10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bower et al. US Patent No. 6,086,558 in view of Crowley US Patent No. 6,364,831.

Bower et al. disclose a catheter device for photodynamic therapy, comprising: a distal end and a proximal end; an optical radiation source positioned at the proximal end of the catheter device; and an inflatable balloon position at the distal end of the catheter device. The balloon is coated with a reflective material that reflects and scatters the optical radiation (see col. 5, lines 51-56; and col. 6, lines 4-7 and 27-34).

Bower et al. further teach that the treatment light source is selected from the group consisting light emitting diodes and laser diodes.

With respect to claim 6, the inflation fluid is treated to be equivalent to the recited cooling means.

As to claim 4, the use of multiple LEDs/laser diodes disposed at the distal end of catheter device is well known the art (see Chen et al. US Patent No. 5,800,478, Fig. 1). Furthermore, Bower et al. teach that the development of efficient LEDs permits the use of probe having a multiple LEDs mounted within the treatment window so as to obviate the need of an external source and delivery optics (see col. 7, lines 30-40). However, they do not specifically incorporate LEDs/laser diodes within the distal end of their device as presently claimed. Crowley teaches an alternative endoscopic device comprising a laser diode 102 disposed at the distal end 3 of the device (see Figs. 1 and 4A).

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Bower et al. in view of Crowley and position a laser diode at the distal end of the device so as to eliminate the need of a fiber optic and diffuser as described by Bower.

2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bower et al. in view of Crowley as applied to claims 1-4 and 6-12 above, and further in view of Berry US Patent No. 6,254,594.

Neither Bower et al. nor Crowley teach the use of chemiluminescent material to provide the treatment radiation. However, the use of chemiluminesce to provide treatment light is known in the medical art. Berry discloses an alternative treatment device in which a chemical mixture is used to provide the treatment energy. Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Bower et al. in view of Crowley and in further view of Berry to use a

chemiluminesce material as an equivalent alternative light source to provide the treatment energy.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chen et al. US Patent No. 5,800,478, disclose a catheter device for PDT, the catheter device comprising a plurality of light sources disposed at the distal end of the catheter. The light sources are selected from the group consisting of LEDs, laser diodes, and a thin film electroluminescent panel. The light sources of Chen et al are configured to provide light at different wavelengths.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 3735

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

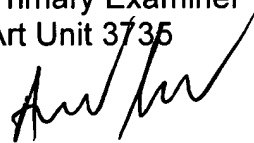
you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ahmed M Farah
Primary Examiner
Art Unit 3735

A handwritten signature in black ink, appearing to read 'Ahmed M Farah', written over the printed name and title.

July 23, 2006.